

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JOHN THIBODEAUX, ET AL

NO. 6:18-CV-501(LEAD)
NO. 6:18-CV-1414 (MEMBER)

VS.

JUDGE ROBERT R. SUMMERHAYS

J.M. DRILLING, LLC.,
ET AL

MAGISTRATE JUDGE
CAROL B. WHITEHURST

MOTION FOR SUMMARY JUDGMENT ON INSURANCE COVERAGE

Now into Court, through undersigned counsel, come Plaintiffs, John Thibodeaux, Amy Thibodeaux, and Gabrielle Thibodeaux, who respectfully assert that there are no genuine disputes as to any material fact that the Rockhill Insurance Company Commercial Excess Follow Form Policy:

- 1) Provides coverage for Plaintiffs' Final Judgment against the insured, J.M. Drilling, LLC., in the matter entitled "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B in the 15th Judicial District Court, Lafayette, Louisiana; and
- 2) Rockhill is legally responsible for payment of Plaintiffs' Final Judgment rendered in the underlying state court proceedings since John Thibodeaux's accident of June 9, 2015 is a single "occurrence" which exhausted the "per occurrence" limit of Admiral's underlying liability policy.

Plaintiffs are entitled to judgment as a matter of law against Rockhill Insurance Company that there is coverage under the policy, and, further, that Rockhill Insurance Company be ordered to pay the remainder of the outstanding Final Judgment as referenced above.

As between the Thibodeaux Plaintiffs and Rockhill Insurance Company, Plaintiffs have asserted both a Declaratory Judgment Action and an Enforcement Action regarding its Final Judgment. In regards to these claims by and between Plaintiffs and Rockhill, neither party has

requested a jury trial. If this Court were to grant this Motion for Summary Judgment finding coverage under the Rockhill Commercial Excess Follow Form Policy, it would end this litigation without having to decide the alternative negligent claims against J.M's insurance agent, Insight, and insurance broker, Insurisk/CRC, for failure to obtain the appropriate coverage.

Plaintiffs seek judicial determination through Summary Judgment on the following issues:

- I. Rockhill's Insurance Company Commercial Excess Follow Form Policy provides coverage regarding the claims of the Thibodeaux Plaintiffs (i.e. Plaintiffs' Final Judgment rendered in the underlying state court proceedings);
- II. The accident of June 9, 2015 injuring John Thibodeaux is a single "Occurrence" (such that Admiral's payment of \$1 million plus interest and costs exhausted Admiral's "per occurrence" limit and Rockhill is now legally responsible for the payment of Plaintiffs' Final Judgment rendered in the underlying state court proceedings); and
- III. Alternatively, if this Court were to find that it was unable to resolve the coverage question in its entirety, then Plaintiffs seek the following individual summary judgment determinations:
 - A. Rockhill's "Subsidence Exclusion" does not exclude coverage regarding the claims of the Thibodeaux Plaintiffs (i.e. Plaintiffs' Final Judgment rendered in the underlying state court proceedings);
 - B. Rockhill's "Residential Contracting-Construction Defect Exclusion" does not exclude coverage regarding the claims of the Thibodeaux Plaintiffs (i.e. Plaintiffs' Final Judgment rendered in the underlying state court proceedings).

In support of its Motion for Summary Judgment on Insurance Coverage, Plaintiffs attach the following exhibits to this Motion:

1. Louisiana Third Circuit decision in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. CA 17-494, rendered on November 22, 2017,
2. Louisiana Third Circuit decision in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. CA 17-495, rendered on November 22, 2017,
3. Louisiana Supreme Court Writ Denial in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2017-C-2149, rendered on February 23, 2018,

4. Motion for Summary Judgment on Liability against J.M. Drilling, LLC. filed by Thibodeaux Plaintiffs in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B, 15th Judicial District Court, Lafayette, Louisiana on January 19, 2018,
5. Trial Court’s Amended Judgment on Rules regarding Thibodeaux Plaintiffs Motion for Summary on Liability against J.M. Drilling, LLC. filed on March 21, 2018,
6. Louisiana Third Circuit decision in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. CA 18-676 rendered on March 7, 2019,
7. Final Judgment against J.M. Drilling, LLC. in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B, 15th Judicial District Court, Lafayette, Louisiana rendered on April 3, 2018,
8. Complaint for Declaratory Judgment filed by Thibodeaux Plaintiffs (including all exhibits attached) in the matter “John Thibodeaux, et. al. vs. J.M. Drilling, LLC., et. al.”, Docket No. 18-501, United States District Court, Western District of Louisiana, Lafayette Division, Doc. No. 1, filed 4/12/18,
9. Complaint for Declaratory Judgment filed by Rockhill Insurance Company in the matter entitled “Rockhill Insurance Company vs. J.M. Drilling, LLC.” United States District Court, Western District of Tennessee, Eastern Division, Case No. 1:18-cv-01050, Doc. 2, filed 6/4/18,
10. Rockhill Insurance Company Answer to Thibodeaux Plaintiffs’ Complaint for Declaratory Judgment, Doc. 15, filed 6/1/18,
11. Thibodeaux Plaintiffs’ Amended Complaint for Declaratory Judgment (including all exhibits), Doc. 75, filed 12/14/18,
12. Rockhill Insurance Company Answer to Thibodeaux Plaintiffs’ Amended Complaint for Declaratory Judgment, Doc. 84, filed 1/15/19,
13. Rockhill Insurance Company Excess Commercial Follow Form Policy, policy no. R XSL RU 000621-03, issued to J.M. Drilling, LLC. with policy period of 5/2/15 to 5/2/16 (Insight Bates # 9055-9128),
14. Affidavit of John Thibodeaux dated January 29, 2021,
15. Admiral Insurance Company Commercial General Liability Policy, policy no. CA000019278-02, issued to J.M. Drilling, LLC. with policy period of 5/2/15 to 5/2/16 (Insight Bates # 9327-9400),
16. Deposition of John Moore (J.M. Drilling, LLC.) taken on January 25, 2021 in the above captioned matter,

17. J.M. Drilling, LLC.'s Response to Thibodeaux Plaintiffs' Amended Request for Admissions in the above captioned matter,
18. J.M. Drilling, LLC. Contractors Questionnaire for insurance coverage for 2014/2015 and 2015/2016 produced in discovery in the above captioned matter (Insight Bates # 6231-6235, 8329-8332),
19. 1442 Deposition of J.M. Drilling taken on March 8, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
20. Deposition of Mark Moore taken on December 6, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
21. 1442 Deposition of Gulfgate Construction, LLC. taken on February 18, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
22. 1442 Deposition of Comeaux Engineering & Consulting taken on November 2, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
23. 1442 Deposition of Bellsouth Telecommunications (Randal Capdepon) taken on February 1, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
24. Continuation of 1442 Deposition of Bellsouth Telecommunications (Randal Capdepon) taken on July 14, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
25. Deposition of Harold Broussard taken on November 4, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
26. Deposition of John Thibodeaux taken on October 10, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),
27. Deposition of Mike Towell (Rockhill Insurance Company) taken on November 17, 2020 in the above captioned matter,
28. Order Denying Rockhill's Motion to Transfer to Tennessee. (Doc. 71, filed 12/13/18),
29. Admiral Ins. Co. Motion to Dismiss (Doc. 54, filed 10/26/18),
30. Deposition of Kelli Kasal (Rockhill Insurance Company) taken on February 4, 2021 in the above captioned matter,

31. Receipt, Release and Indemnity Agreement between Thibodeaux Plaintiffs, J.M. Drilling, LLC., and Admiral Insurance Company in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B (underlying state suit),
32. Affidavit of Randall King executed on February 12, 2021,
33. Affidavit of Mark Moore executed on February 24, 2021, and
34. Deposition of Brenda Johnson taken on October 1, 2020, in the above captioned matter.

CONCLUSION

For the foregoing reason, Plaintiffs, John Thibodeaux, Amy Thibodeaux, and Gabrielle Thibodeaux, respectfully request that this Honorable Court grant their Motion for Summary Judgment on Insurance Coverage, finding that the Rockhill Insurance Company Commercial Excess Follow Form Policy:

- 1) Provides coverage for Plaintiffs’ Final Judgment against the insured, J.M. Drilling, LLC., in the matter entitled “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B in the 15th Judicial District Court, Lafayette, Louisiana; and
- 2) Rockhill is legally responsible for payment of Plaintiffs’ Final Judgment rendered in the underlying state court proceedings since John Thibodeaux’s accident of June 9, 2015 is a single “occurrence” which exhausted the “per occurrence” limit of Admiral’s underlying liability policy.

Further, Plaintiffs request that this Honorable Court order Rockhill Insurance Company to pay the remainder of the outstanding Final Judgment as referenced above. Finally, Plaintiffs request that all costs associated with this hearing be assessed against Defendant, Rockhill Insurance Company.

Respectfully Submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing has this day been electronically mailed to all counsel of record.

Lafayette, Louisiana, this 5th day of March 2021.

/s/ Edward O. Taulbee
Edward O. Taulbee, IV.-#12699